

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs May 10, 2006

STATE OF TENNESSEE v. TERRY V. JOHNSON

Direct Appeal from the Circuit Court for Rutherford County
No. F-55610 James K. Clayton, Jr., Judge

No. M2005-01858-CCA-R3-CD - Filed June 12, 2006

The defendant, Terry V. Johnson, was convicted of the sale of less than .5 grams of cocaine. See Tenn. Code Ann. § 39-17-417(a)(3) (2003). The trial court sentenced the defendant, a career offender, to fifteen years in the Department of Correction. In this appeal, the defendant asserts that the evidence was insufficient to support his conviction. The judgment of the trial court is affirmed.

Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed

GARY R. WADE, P.J., delivered the opinion of the court, in which JERRY L. SMITH and ALAN E. GLENN, JJ., joined.

Jeffrey S. Burton, Assistant Public Defender, for the appellant, Terry V. Johnson.

Paul G. Summers, Attorney General & Reporter; Sophia S. Lee, Assistant Attorney General; William C. Whitesell, Jr., District Attorney General; and Trevor H. Lynch and Thomas S. Santel, Jr., Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

On October 16, 2003, Detective Merrill Beene of the Murfreesboro Police Department arranged a controlled drug purchase in the Sevier Street area of Murfreesboro using a confidential informant. Detective Beene searched the informant and his vehicle before the transaction and provided him with \$100 in cash. The informant was fitted with audio recording equipment and his vehicle was fitted with video recording equipment. Detective Beene and other officers monitored the transaction via a sound repeater from a remote location. After the informant made a purchase of crack cocaine, the detective reviewed the video recording and immediately identified the defendant as the seller.

Detective Beene returned to the Sevier Street area and made contact with the defendant, who was still wearing the same clothing as depicted in the video recording. Because of an ongoing investigation, the defendant was not arrested until five months later. The video was enhanced,

transferred to VHS, and played for the jury. Testing by the Tennessee Bureau of Investigation confirmed that the substance purchased by the informant was cocaine.

Clara Johnson, the defendant's mother, claimed on behalf of the defense that the individual featured in the video was not her son. She stated that "[a]cross the facial structure . . . [the] nose [is] wider . . . across the facial structure and on the forehead." She added that "[t]he eyes seem to be more back and the nose . . . sit[s] back and the . . . low part of the nose is wider."

In this appeal, the defendant asserts that the evidence is insufficient to support his conviction. He contends that the state failed to prove his identity as the perpetrator. On appeal, of course, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as the trier of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. Liakas v. State, 286 S.W.2d 856, 859 (1956). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992).

Identity, of course, is an indispensable element. See White v. State, 533 S.W.2d 735, 744 (Tenn. Crim. App. 1975). Our law provides that identification of the perpetrator of a crime may be accomplished by either direct or circumstantial evidence, or both. State v. Thompson, 519 S.W.2d 789, 793 (Tenn. 1975). The determination of identity is a question of fact for the jury after consideration of all competent evidence. See Biggers v. State, 411 S.W.2d 696, 697 (Tenn. 1967); Sanders v. State, 281 S.W. 924, 924 (Tenn. 1925); State v. Strickland, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993); State v. Crawford, 635 S.W.2d 704, 705 (Tenn. Crim. App. 1982).

Here, Detective Beene testified that he reviewed the videotape of the transaction and immediately recognized the defendant, with whom he was familiar. He stated that when he returned to the scene of the transaction after reviewing the tape, the defendant was wearing the same clothing as the individual in the tape. Two still photographs taken from the videotape were admitted into evidence and displayed to the jury. While the defendant contends that Detective Beene's testimony that he was sufficiently familiar with the defendant to recognize him in the videotape was not credible, "[i]ssues of identity and credibility are classic jury questions." State v. Joseph B. Thompson, No. E2002-00061-CCA-R3-CD (Tenn. Crim. App., at Knoxville, Mar. 17, 2003). In this instance, the jury chose to accredit the testimony of the state's witnesses, as was its prerogative. See State v. Summerall, 926 S.W.2d 272, 275 (Tenn. Crim. App. 1995). In our view, the evidence was

sufficient for a rational trier of fact to have found beyond a reasonable doubt that the defendant committed the crimes.

Accordingly, the judgment of the trial court is affirmed.

GARY R. WADE, PRESIDING JUDGE